

conditions that the engine may reasonably be expected to encounter during normal operation and use. (Note that this means emission control for operation outside of and between the official test modes is generally expected to be similar to emission control demonstrated at the test modes.) This does not apply to auxiliary emission control devices you identify in your application for certification if any of the following is true:

(1) The conditions of concern were substantially included in the applicable duty-cycle test procedures described in subpart F of this part (the portion during which emissions are measured).

(2) You show your design is necessary to prevent engine (or vessel) damage or accidents.

(3) The reduced effectiveness applies only to starting the engine.

(4) The engine is a Category 3 engine and the AECD conforms to the requirements of paragraph (g) of this section. See § 1042.650 to determine if this allowance applies for a given Category 1 or Category 2 engine.

(g) *On-off controls for Category 3 engines.* Manufacturers may equip Category 3 engines with features that disable Tier 3 NO_x emission controls subject to the provisions of this paragraph (g). See § 1042.650 to determine if this allowance applies for a given Category 1 or Category 2 engine. Where this paragraph (g) applies for a Category 1 or Category 2 engine, read “Tier 2” to mean “Tier 3” and read “Tier 3” to mean “Tier 4”.

(1) Features that disable Tier 3 emission controls are considered to be AECDs whether or not they meet the definition of an AECD. For example, manually operated on-off features are AECDs under this paragraph (g). The features must be identified in your application for certification as AECDs. For purposes of this paragraph (g), the term “features that disable Tier 3 emission controls” includes (but is not limited to) any combination of the following that cause the engine’s emissions to exceed any Tier 3 emission standard:

(i) Bypassing of exhaust aftertreatment.

(ii) Reducing or eliminating flow of reductant to an SCR system.

(iii) Modulating engine calibration in a manner that increases engine-out emissions of a regulated pollutant.

(2) You must demonstrate that the AECD will not disable emission controls while operating in areas where emissions could reasonably be expected to adversely affect U.S. air quality. If an ECA has been established for U.S. waters, this means you must demonstrate that the AECD will not disable emission control while operating in waters within the ECA or any ECA associated area. (Note: See the regulations in 40 CFR part 1043 for requirements related to operation in ECAs, including foreign ECAs.) Compliance with this paragraph will generally require that the AECD operation be based on Global Positioning System (GPS) inputs. We may consider any relevant information to determine whether your AECD conforms to this paragraph (g).

(3) The onboard computer log must record in nonvolatile computer memory all incidents of engine operation with the Tier 3 emission controls disabled.

(4) The engine must comply fully with the Tier 2 standards when the Tier 3 emission controls are disabled.

[73 37243, June 30, 2008, as amended at 73 FR 59193, Oct. 8, 2008; 75 FR 22998, Apr. 30, 2010]

§ 1042.120 Emission-related warranty requirements.

(a) *General requirements.* You must warrant to the ultimate purchaser and each subsequent purchaser that the new engine, including all parts of its emission control system, meets two conditions:

(1) It is designed, built, and equipped so it conforms at the time of sale to the ultimate purchaser with the requirements of this part.

(2) It is free from defects in materials and workmanship that may keep it from meeting these requirements.

(b) *Warranty period.* Your emission-related warranty must be valid for at least as long as the minimum warranty periods listed in this paragraph (b) in hours of operation and years, whichever comes first. You may offer an

emission-related warranty more generous than we require. The emission-related warranty for the engine may not be shorter than any published warranty you offer without charge for the engine. Similarly, the emission-related warranty for any component may not be shorter than any published warranty you offer without charge for that component. If an engine has no hour meter, we base the warranty periods in this paragraph (b) only on the engine's age (in years).

The warranty period begins when the engine is placed into service. The following minimum warranty periods apply:

(1) For Category 1 and Category 2 engines, your emission-related warranty must be valid for at least 50 percent of the engine's useful life in hours of operation or a number of years equal to at least 50 percent of the useful life in years, whichever comes first.

(2) For Category 3 engines, your emission-related warranty must be valid throughout the engine's full useful life as specified in §1042.104(d).

(c) *Components covered.* The emission-related warranty covers all components whose failure would increase an engine's emissions of any regulated pollutant, including components listed in 40 CFR part 1068, Appendix I, and components from any other system you develop to control emissions. The emission-related warranty for freshly manufactured marine engines covers these components even if another company produces the component. Your emission-related warranty does not need to cover components whose failure would not increase an engine's emissions of any regulated pollutant. For remanufactured engines, your emission-related warranty is required to cover only those parts that you supply or those parts for which you specify allowable part manufacturers. It does not need to cover used parts that are not replaced during the remanufacture.

(d) *Limited applicability.* You may deny warranty claims under this section if the operator caused the problem through improper maintenance or use, as described in 40 CFR 1068.115.

(e) *Owners manual.* Describe in the owners manual the emission-related

warranty provisions from this section that apply to the engine.

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§ 1042.125 Maintenance instructions.

Give the ultimate purchaser of each new engine written instructions for properly maintaining and using the engine, including the emission control system, as described in this section. The maintenance instructions also apply to service accumulation on your emission-data engines as described in §1042.245 and in 40 CFR part 1065. The restrictions specified in paragraphs (a) through (e) of this section related to allowable maintenance apply only to Category 1 and Category 2 engines. Manufacturers may specify any maintenance for Category 3 engines.

(a) *Critical emission-related maintenance.* Critical emission-related maintenance includes any adjustment, cleaning, repair, or replacement of critical emission-related components. This may also include additional emission-related maintenance that you determine is critical if we approve it in advance. You may schedule critical emission-related maintenance on these components if you meet the following conditions:

(1) You demonstrate that the maintenance is reasonably likely to be done at the recommended intervals on in-use engines. We will accept scheduled maintenance as reasonably likely to occur if you satisfy any of the following conditions:

(i) You present data showing that any lack of maintenance that increases emissions also unacceptably degrades the engine's performance.

(ii) You present survey data showing that at least 80 percent of engines in the field get the maintenance you specify at the recommended intervals.

(iii) You provide the maintenance free of charge and clearly say so in your maintenance instructions.

(iv) You otherwise show us that the maintenance is reasonably likely to be done at the recommended intervals.

(2) For engines below 130 kW, you may not schedule critical emission-related maintenance more frequently than the following minimum intervals,